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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,251	10/17/2003	Robert Kissel		4577

7590 02/10/2009  
ROBERT KISSEL  
629 SOUTH CAROLINA COURT  
ST CHARLES,, MO 63303

EXAMINER
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DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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02/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/688,251

Applicant(s)

KISSEL, ROBERT

Examiner

Jerome W. Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 9/19/08
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) \_\_\_\_\_ is/are pending in the application. 1-9, 11 13-25 27-33 and 35-39
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected. 1-9, 11 13-25 27-33 and 38
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

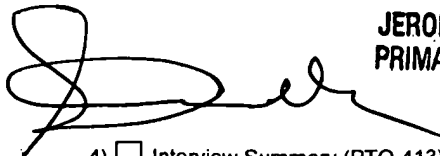
- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

  
JEROME DONNELLY  
PRIMARY EXAMINER

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 11, 14-25 and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaramucci in view of McNergney.

Scaramucci discloses a device comprising a plurality of resistance members (2) weights, selectors for selecting weights from a plurality of weights and a controller for automatically controlling the selector to change a resistance, upon an occurrence, see col. 3, line 17-19, and col. 1, lines 64-68. The device of Scaramucci discloses “automatically controlling”.

In regard to claims 2, 3, 4, 9, 15, 16, 17, 22 and 24, the examiner notes that, it is well known in the art to manufacture weight plates as having at least four different values of resistance. The examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the plates of Scaramucci as having weight plates of a plurality of values including four or more values as one of several value mixes, for the purpose of providing a user tailored resistance workout regimen.

The examiner further notes the disclosure of McNergney et al which discloses at least three values of resistance.

Given the above teachings and what would be obvious to one of ordinary skill in the art. The examiner notes that it would have been obvious to one of ordinary skill in the art to modify the device of Scaramucci to include plate members of at least four

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different values, in even multiples as one of many resistance configurations applicable in the art, unless the applicant prove the claimed critically of applicants exact claimed resistance configuration.

In regard to claim 9, Scaramucci discloses weights. In regard to claim 5 and 15 the examiner reminds the applicant that the applicant is not claiming that the resistance members are disposed side by side with each other. The applicant is only claiming that the resistance members are disposed horizontally. The examiner further notes that the language of "with respect to each other" is extremely broad in scope.

In regard to claim 18 as broadly claimed note Fig. 5 of Scaramucci wherein the plates (20 are horizontally disclosed and wherein selector has a central axis about with a distribution of weight is disposed.

In regard to claims 6-18, 19-21 and 28 note flat plates (22).

The limitations of claims 23, 25 and 27-30 are addressed in the response to the above claims containing substantially the same claim limitations.

In regard to claims 32 and 33 the addition of a manually operated member in the claims adapted to be moved by a user. The examiner notes that the device of Scaramucci is a device for selecting, used in conjunction with an exercising apparatus. The examiner notes that exercising devices are known to include manually operated members, and therefore it would have obvious to one of ordinary skill in the art to provide the device of Scaramucci with a manually operated member so as to include an actuating means as a portion of Scaramucci.

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In regard to claim 11, note the embodiment of fig. 3 of Scaramucci wherein it is shown that the selectors are part of the resistance members and are shown to be electromechanical and having a mechanical.

In regard to claim 14, the applicant claims are so broad so as to read on plugging and/or unplugging one computer and the plugging in another. Adapted to be controlled fails to further limit the device of claim 14.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 38 is rejected under 35 U.S.C. 102(b) as being anticipated by Ripley.

Claim 38 is rejected for the same reasons as set forth in the rejection of claim 38 in the office action of 9/27/07.

The examiner further notes that the claims are so broad as to read on the base of Ripley being a tapered opening, which each of said weights are received and given that there are two base members, the language of the base member having a plurality of openings is met.

(c) he has abandoned the invention.

Claims 13 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaramucci in view of McNergney and further in view of Alessandri 6494811.

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Applicant claims are so broad in scope, and read on a detection of a condition and a controller (computer) responding to that condition.

Alessandri discloses an exercise device comprising a diction system and a controller.

Given Alessandri's above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a measuring unit such as shown as part of the device of Scaramucci for the purpose of allowing a user of Scaramucci to calculate static and dynamic training parameters.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication should be directed to Jerome  
Donnelly at telephone number (571)272-4975.

em

1/31/2009

**JEROME DONNELLY**  
**PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read 'Jerome Donnelly', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.